

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Richard Clayton	:	
-vs-	:	
Commonwealth Edison Company	:	12-0478
	:	
Complaint as to billing/charges in	:	
Carol Stream, Illinois.	:	

PROPOSED ORDER

By the Commission:

On August 15, 2012, pursuant to Section 10-108 of the Illinois Public Utilities Act (220 ILCS 5/10-108) (“the Act”), Richard Clayton (“Complainant”) filed with the Illinois Commerce Commission (“Commission”) a complaint against Commonwealth Edison Company (“ComEd”), alleging that Respondent overcharged him by inflating kilowatt hours used, double billed him, charged late fees on disputed bills, denied him access to his account and meter records, and denied him access to Respondent’s personnel responsible for billing records.

I. Background

Pursuant to notice as required by the rules and regulations of the Commission, a prehearing conference was scheduled before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois on December 13, 2012. Complainant appeared pro se, ComEd appeared by counsel. This matter was set for hearing on February 20, 2013, but was continued for hearing to March 19, 2013, to enable Complainant to obtain copies of recordings of conversations with various ComEd personnel.

At hearing on March 19, 2013, Complainant testified in his own behalf and sponsored Exhibit 1-Fax cover sheet and various ComEd bills to Complainant; Exhibit 2-ComEd bills to Complainant; Exhibit 3-a letter from ComEd to Complainant dated March 21, 2012; Exhibit 4-Commission complaint form; Exhibit 5-Monthly Usage Statement for Complainant’s Account; Exhibit 6-Fax cover sheet and Daily Usage Statement for Complainant’s account; Exhibit 7-ComEd bills and disconnection notice for Complainant’s account; Exhibit 8-Fax from ComEd to Complainant, August 21, 2012; Exhibit 9-Complainant spreadsheet calculating average monthly usage; Exhibit 10-DVD containing conversations between Complainant and ComEd.

Respondent presented the testimony of Trishaun Funches, Senior Business Analyst, who sponsored ComEd Exhibit 1-Account Activity Statement and ComEd late-filed Exhibit 2-Tariff III.C.C. No. 10, 1st Rev. No. 201. At the conclusion of the hearing on March 19, 2013, the parties' exhibits were admitted into evidence and this Docket was marked "Heard and Taken".

All transcript citations are taken from the March 19, 2013 hearing.

II. Complainant Position

Testimony of Mr. Clayton

Complainant testified that he resides in a split-level, single family home in Carol Stream, Illinois. He uses his dwelling for purely residential purposes and employs only standard appliances, including central air conditioning, in his daily living.

Complainant testified that in January and February 2011, he contacted ComEd and Watt Spot to inquire why he had received a series of bills based upon estimated readings.¹ He did not receive a satisfactory explanation from either entity. In April 2011, Watt Spot directed him to fax a copy of the estimated bills to it (Complainant Exhibit 1). Complainant was not concerned about the bills, because the estimated usage was within what he considered to be a normal range.

Complainant stated that he received two bills in January 2012, one dated January 24 showing an estimated 1631 kilowatt hours ("kWH") used, and another dated January 25, showing an estimated 1894 kWH used. (Complainant Ex. 2). ComEd could not explain why the bills were estimated and Complainant informed ComEd that he intended to dispute each bill. Mr. Clayton testified that in February 2012, he had personally observed ComEd read his meter, but the bill he subsequently received contained another estimated reading (900 kWH) (Id.).

Complainant testified that the 900 kWH reading resulted in a misbill of \$156.46, because he had previously calculated his average monthly usage at 989 kWH. Complainant calculated this average by totaling all of the kilowatt hours used and dividing by the number of months. (Complainant Ex. 9). He testified that he was billed 1203 kWH for April 2012, which also exceeded the 989 kWH average. Any estimated bill showing other than 989 kWH usage would be in error. He conceded that the February 2012 reading showed a drop in usage, but it was still an estimate. He contacted ComEd again, which assured him it would check and test the meter and it would work itself out. Complainant testified that he understood that to mean that the meter would fix itself, which he agreed would have been accurate if he had an analog meter. His dwelling has a digital meter, however, that erases all prior data once the meter probe is connected. The meter was functioning properly, but between the time the probe was connected and the data was uploaded to ComEd, the data disappeared.

¹ Watt Spot is ComEd's on-line real-time pricing program

Complainant was told by ComEd that it would re-read and test the meter and that he would not be charged late fees until the test was completed.

Complainant was able to obtain an actual meter reading of 798 kWH on March 11, 2012, however he was not able to obtain an explanation as to why he received an actual reading this time and not before. Also, the meter reader told him he was there just to read the meter, and had no explanation why a test would not be performed. Complainant received a letter from ComEd (Complainant Ex. 3) that stated his account had been analyzed using the new meter reading, he had been billed correctly and would be required to pay the full amount shown. Complainant also stated that ComEd began adding late charges to his account after assuring him that he would not be penalized. He contacted ComEd again, was assured it would provide another re-read, and he advised them that he would dispute all bills except those resulting from actual reads. He paid the March 2012 bill in full.

Complainant testified that in April 2012, ComEd informed him by phone that it would change his meter because it could not be tested in the field. Complainant asserted that this was untrue, because the probe is also designed to test the meter. He had contacted the company that supplied the probe and learned that ComEd had accepted the meter pursuant to a pilot program, but did not take the software. This led him to conclude that ComEd had developed its own software to run the meter the way it wanted to, instead of the way that it was designed, which would not be a problem except for the resulting estimated bills.

Complainant testified that even though there is no procedure available for a customer to input a bill either on the phone or online, ComEd informed him that he could call it in. When ComEd asked him why he could not input the bill, he answered that the meter is digital. Complainant stated that at no time did ComEd notify him of his right to file an informal complaint with the Commission under 83 Ill. Adm. Code 280.160. He further testified that on each occasion when he contacted ComEd, he requested to speak to a supervisor, but was disconnected.

Complainant testified that after receiving Complainant's Ex. 3, he called ComEd to ask how they had calculated the reading and was informed that it was based on past history. He stated that the past history of the account does not show any numbers close to 1600 kWH or 1800 kWH, and no one from ComEd could tell him how those numbers were obtained. He calculated his own kilowatt hours and could find no billing period where they exceeded 1560 (Tr. at 34). He stated that when he asked ComEd for the March 11, 2012 reading, he was told the computer had rejected it and received no further explanation.

Complainant then obtained monthly and daily usage readings from Watt Spot (Complainant Exs. 5 and 6) and noted that particular days had exactly the same kilowatt hours for different hours in the day, such as "41.2-something" and "60 point something kilowatt hours." (Tr. at 36). He said his normal usage ranges from 20 to 40 kilowatt hours per day, so the readings from Watt Spot are a physical impossibility. Moreover,

everyone in his household would have to do the exact same thing at exactly the same time every day. He testified that ComEd agreed that it was incorrect, but no one took the initiative to fix it.

Complainant testified that, after he filed an informal complaint with the Commission in April 2012, he received letter from ComEd containing a calculation of kilowatt hours (Complainant Ex. 8). He referenced a Monthly Usage Statement (Complainant Ex. 5) with his handwritten note next to the March 21, 2012 entry stating, "sent two people out within 1 hr. of each other and failed to get a reading before pulling meter." He also presented a fax dated April 24, 2012 with daily kilowatt hour usage attached that was sent to Annette in Customer Relations (Complainant Ex. 6), which he claimed contains data that Annette previously stated she could not access.

Complainant stated that he included Complainant Ex. 7, ComEd bills for his account and a notice of disconnection, to show the actual usage on the account and to show that the account had been opened in April 2010. Since ComEd had informed him it could go back only two years from April 2012, Ex. 7 shows that April 2010 is within the required two years. He acknowledged that the handwritten notations, "for beginning of account kwh used" and "only for that purpose" were made by him to show the total kilowatt hours for the account and that they were supplied by ComEd.

Complainant also sponsored Ex. 9, his own calculation of kilowatt hour averages taken from ComEd data. He testified that the numbers, once totaled, did not reflect what ComEd had billed him.

Referring to the billing dates June 20, 2011 to July 20, 2011 for \$135.71, and July 20, 2011 to August 18, 2011 for \$181.81 on ComEd Ex. 1, Complainant stated that a real-time pricing meter had not been installed on his home at that time. The standard analog was still being used and kilowatt hours were billed at a different rate. The real time pricing meter was installed exactly one month after the bill for \$135.71 had been issued.

III. ComEd Position

Testimony of Ms. Funches

Ms. Funches testified that ComEd Ex. 1 is an Account Activity Statement for Complainant's account showing billing and payment activity. Complainant's current balance is \$423.41. She stated that estimated billings are based upon algorithms on file with the Commission. It is not as simple as averaging previous usage. The estimated bills issued to Complainant from January 2012 through April 2012 were based upon, among other things, data obtained from previous histories, which are included in a formula that estimates usage per data points. Hourly data points are used to obtain a flat estimate over certain hours. This would not be true of actual readings taken subsequently because of the type of meter Complainant has. His meter estimates

usage on an hourly basis pursuant to a mathematical formula approved by the Commission.

Ms. Funches testified that she did not know whether the mathematical formula included variables such as weather, the number of people living in a dwelling, or whether smart appliances are used. She stated that estimated bills are issued on an hourly recorded meter because if, after the information from the meter probe is downloaded, it is missing even one hourly data point, it will stop billing and refer it for manual billing. This refers to the formula on file with the Commission used to estimate usage. The data is manually entered into the system by a person, but it is the formula that calculates the estimated usage. The system will not bill if a single data point is missing.

Ms. Funches testified that customers of ComEd are liable to receive, and are permitted to dispute, estimated bills. Customers also have recourse for further review. She stated that she has, at times, personally explained to customers that estimated bills are based on an algorithm. Such explanations are not standard procedure for customer service personnel, but customer relations may mention the algorithm depending upon how involved the explanation becomes.

Ms. Funches agreed with Complainant that if he had an analog meter, he would get charged a standard rate, regardless of how much electricity he used. The rate for real time pricing is different. When ComEd uses the formula to estimate the bill, the estimate would be for the specific rate. The biller would know what rate the customer is on and would use the estimating tool for that rate. The data is entered into the formula and the calculation is what results. Ms. Funches could not say what specific data gets entered. The same formula is applied across the board, but customers are not billed at a standard rate if they are on real time pricing. An estimated bill could likely be higher than a customer's normal average bill.

IV. Commission Analysis and Conclusions

Complainant attached to the standard Commission complaint form a seven page narrative containing allegations of incorrect estimated readings by ComEd. The complaint concludes with six separate requests for relief. Complainant has the burden of proving that ComEd erred in billing his account.

Complainant's principle contention at hearing was that any ComEd estimates that failed to match his calculated average monthly usage of 989 kWH were in error. (Complainant Exhibit 9). Complainant had totaled up all of the kilowatt hours used by his account beginning in April 2010, and divided that sum by the total number of months his account had been opened. (Tr. at 21-22, 64-65). Complainant produced evidence showing that several bills contained estimates varying significantly from 989 kWH. (Complainant Exhibits 1 and 2).

The Commission finds that ComEd's witness testified convincingly that ComEd calculates estimated bills based upon algorithmic formulas filed with the Commission, and that estimates are not derived by simply calculating averages. (Tr. at 74-75). She further testified that if the information obtained from a probed meter is missing a single hourly data point, it has to be billed manually using the formula on file with the Commission. (Id. at 81).

ComEd's late-filed Exhibit 2 contains nine pages of formula used to calculate estimating billings. This tariff has been approved by the Commission. The Commission readily concedes that the process appears to be complicated, but there is nothing contained in any of the record evidence in this Docket that would lead it to conclude that the formula for calculating estimated usage is anything but accurate and proper. The Commission notes, moreover, that nowhere in the record of this proceeding is a citation to any statute, rule, regulation or tariff that would require ComEd to estimate usage according to the average computed by Complainant.

The Commission further finds that consecutive estimated readings are permissible under 83 Ill. Adm. Code 280.80(a), which states:

- a) All utilities shall make an actual meter reading at least every second billing period, and no utility may consecutively estimate a customer's service usage unless:
 - 1) the procedure used by the utility to calculate estimated bills has been approved by the Commission; and
 - 2) the word "estimate" appears prominently on the face of the bill, in a manner previously approved by the Commission.

Complainant Exhibits 1 and 2 clearly show that his account was billed pursuant to a series of estimated readings in 2010, 2011 and 2012. Neither party disputed this. However, Section 280.80(a) allows consecutive estimated readings if the procedure calculating the estimate has been approved by the Commission and the word "estimate" appears prominently on the face of the bill. Regarding approval of the procedure, the Commission again cites ComEd's late-filed Exhibit 2 and the direct testimony of ComEd's witness (Tr. at 74-75). The Commission further cites ComEd's witness on cross-examination that the algorithmic formula is "...on file with the Illinois Commerce Commission, so they've approved the process..." (Tr. at 80). Further, an examination of Complainant's Exhibits 1 and 2 discloses that where the word "estimate" appears, it does so clearly and legibly on the face of each bill, thereby satisfying the condition that it appear "prominently."

The record shows that Complainant was not overbilled by estimated readings. ComEd's evidence shows he was billed according to the algorithmic formula contained in ComEd's late-filed Exhibit 2, on file with, and approved by, the Commission. There is no evidence that Complainant was double-billed. The bills issued on January 24, 2012 and January 25, 2012 (Complainant's Exhibit 2) cover two separate service periods.

Moreover, ComEd applies late fees strictly pursuant to tariff and there is no evidence to establish that ComEd acted outside of the tariffs on file.

Complainant did not make clear what account and meter records he was unable to access. He produced a significant amount of evidence based upon his account records, and had access to records sufficient to calculate his monthly average kilowatt hour usage for an approximately 20 month period. (Complainant Exhibit 9). He did not explain to what meter information he was unable to gain access. He testified that prior data on a digital meter is erased when it is probed for the next billing cycle (Tr. at 23-24), however such information was not being withheld. It had become non-existent and therefore could not be accessed. Complainant offered no explanation of what other meter data was kept from him.

Complainant's Exhibit 10 is a DVD containing approximately two total hours of conversation between Complainant and ComEd employees on various dates from April 11, 2011 to June 6, 2012. The Commission has listened to the conversations in their entirety. Complainant is heard asking for particular information regarding his account. The Commission concludes that Complainant was able on a routine basis to attain access to ComEd personnel responsible for his billing records. Further, such personnel appear to have been patient and rendered the assistance Complainant requested, within the limitations of their respective positions. The Commission heard nothing of probative value in these conversations and finds that they provide no basis upon which to grant Complainant any of the requested relief.

The Commission concludes from its analysis of the evidence in this Docket that Complainant has not met his burden of proof. Each of the six requests for relief set forth in the conclusion to his complaint should be denied.

V. Findings and Ordering Paragraphs

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) On August 15, 2012, Richard Clayton filed a complaint against Commonwealth Edison Company pursuant to Section 10-108 of the Act, alleging that Respondent overcharged him by inflating kilowatt hours used, double billed him, charged late fees on disputed bills, denied him access to his account and meter records, and denied him access to Respondent's personnel responsible for billing records;
- (2) Commonwealth Edison company is an Illinois corporation engaged in furnishing electric service to customers in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105);
- (3) the Commission has jurisdiction over the parties hereto and the subject matter herein;

- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (5) the Commission finds that Respondent has properly billed Complainant pursuant to tariffs approved by the Commission, that Complainant was not double-billed, he was properly charged late fees, he was not denied access to account and meter records, and he was able to contact ComEd personnel responsible for his billing records;
- (6) the Commission finds that Complainant has not met his burden of proof and the relief he requests should be denied;
- (7) the complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Richard Clayton against Commonwealth Edison Company is denied.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	June 5, 2013
BRIEFS ON EXCEPTIONS DUE:	June 19, 2013
REPLY BRIEFS ON EXCEPTIONS DUE:	June 26, 2013

John T. Riley,
Administrative Law Judge